

**MINUTES OF THE
THIRD REGULAR MEETING OF THE
2001 REAPPORTIONMENT COMMISSION**

**June 14, 2001
2:00 p.m.**

**Hawaii State Capitol
Room 329
Honolulu, Hawaii**

Commissioners in Attendance:

Mr. Wayne K. Minami, Chairperson
Mr. Deron K. Akiona
Ms. Jill E. Frierson
Mr. Lynn C. Kinney
Mr. Kenneth T.G. Lum
Mr. Harold S. Masumoto

Commissioners Excused from the Meeting:

Mr. Richard R. Clifton, Vice-Chairperson
Ms. Lori Hoo
Mr. David Rae

Advisory Council in Attendance:

Mr. Mark Andrews, Maui
Mr. Manuel Moniz, Maui
Mr. Fred Rohlfing, Maui
Ms. Madge Schaefer, Maui
Mr. Stephen Goodenow, Oahu
Mr. Jim Hall, Oahu
Mr. Dennis Esaki, Kauai
Mr. Jerome Hew, Kauai

Technical Support Staff in Attendance:

Mr. Dwayne D. Yoshina, Office of Elections
Mr. Lawrence Chun, Office of Elections/Reapportionment Staff
Ms. Cynthia Fukunaga, Office of Elections/Reapportionment Staff
Mr. Strather Ing, Office of Elections/Reapportionment Staff
Mr. Scott Nago, Office of Elections
Ms. Keala Naluai, Office of Elections/Reapportionment Staff
Mr. David Rosenbrock, Office of Elections/Reapportionment Staff

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Mr. Rex Quidilla, Office of Elections
Ms. Robynn Yokooji, Office of Elections
Mr. Brian Aburano, Department of the Attorney General
Mr. Aaron Schulaner, Department of the Attorney General

Consultant Services Contractor:

Mr. Royce Jones, ESRI

Observers Present:

Mr. Pat Omandam, Honolulu Star-Bulletin
Mr. Larry Meacham, Common Cause Hawaii
Mr. Kevin Dayton, Honolulu Advertiser
Mr. Glen Takahashi, Clerk's Office City & County
Mr. Jean Aoki, League of Women Voters
Mr. Marc Oto, Speaker of the House Office
Mr. Boyd Akase, Republican House Minority Office
Mr. Brad Stein, Carter & Burgess
Mr. Shelton Jim On, Hawaii Republican Party
Mr. Tom Gill, American Civil Liberties Union
Mr. James Funaki, Speaker of the House Office
Ms. Linda Chu Takayama
Ms. Barbara Marumoto, House
Mr. Charles Carole, League of Women Voters
Mr. Chadd Kadota, Clerk's Office City & County
Mr. Karl Rhoads, Downtown Neighborhood Board

I. Call to Order

Chairperson, Wayne Minami, called the Third Regular Meeting of the 2001 Reapportionment Commission to order at 2:05 p.m. in Conference Room 329 of the Hawaii State Capitol, Honolulu, Hawaii.

II. Swearing in of Chairperson Mr. Wayne K. Minami

Chairperson, Wayne K. Minami, was administered the Affirmation and sworn in by Chief Election Officer, Dwayne D. Yoshina.

Chairperson Minami asked all Commission members and persons in attendance to introduce themselves so that everyone could get to know each other. Each Commission member and person in attendance introduced himself or herself.

III. Approval of Minutes

Commissioner Jill Frierson moved to have the minutes of the Second Regular Meeting of the 2001 Reapportionment Commission approved. Commissioner Deron Akiona seconded the motion. The minutes were approved by a unanimous vote of the Commissioners in attendance.

PROCEEDINGS

IV. Committee Reports

A. Committee on Rules and Procedures

Commissioner Frierson reported that the committee had a draft of proposed rules for the Commission's review, approval and adoption. The Commission members were given copies of the proposed rules redlined to show the most recent changes that were made.

Deputy Attorney General, Brian Aburano, highlighted the recent changes that were made to the proposed rules. He mentioned that the changes made were primarily to the rules concerning public comment.

- Under the proposed rules, the Commission may set standards and criteria both as to form and content for the submission of plans to the Commission. The Commission will not be required to review or consider plans that do not meet these standards and criteria.
- The proposed rules also require that any person desiring to testify at a Commission meeting or public hearing: (1) make a request to the Commission's secretary at least 48 hours prior to the meeting or hearing in question; and (2) provide a written copy of the person's testimony to the Commission's secretary prior to the meeting or hearing in question. The Commission may refuse to hear the testimony of any person failing to fulfill these requirements. The proposed rules also provide that the Commission can limit public testimony to a specific time period, but in no case shall the time period be less than three minutes per person.

Chairperson Minami asked for a motion to approve the proposed rules. Commissioner Frierson moved to approve the rules as presented. Commissioner Akiona seconded the motion.

Commissioner Harold Masumoto mentioned that three of the Commissioners are absent and asked whether or not the vote should be deferred to the next meeting. Commissioner Frierson mentioned that Commissioner David Rae is up to speed on the proposed rules and Commissioner Richard Clifton has had a chance to review the proposed rules, but she could not speak for the other absent Commissioner.

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Chairperson Minami mentioned that he would like for the Commission to act on adopting the rules so that they would have rules to proceed under. Chairperson Minami also mentioned that the Commission could later amend the rules, if necessary.

There being no further discussion, the motion to adopt the proposed rules as the rules of practice and procedure for the Commission was approved, by a unanimous vote of the Commissioners in attendance.

B. Advisory Council (Stephen Goodenow)

Chairperson Minami noted that the Commission Staff has received questions about the role of the Advisory Councils. Further, he noted that it has been decided to invite the Advisory Councils to all Commission meetings, to pay their reasonable and necessary expenses for attendance at such meetings, and give them a place on the agenda to ask questions or give comments and suggestions.

Chairperson Minami emphasized that the HRS states that the Advisory Councils can organize and select a Chairperson. Chairperson Minami also suggested how the Advisory Council would interact with the Commission. His preference is for the Advisory Councils to coordinate their activities with the Commissioners that were appointed by the same appointing bodies as themselves.

Mr. Stephen Goodenow, Advisory Council member for Oahu, requested to be on the agenda to ask a few questions to the Commission about the role of the Advisory Councils.

- In addition, Mr. Goodenow asked questions regarding what, if any, rules applied to the Advisory Councils.
- He asked about the procedures for obtaining meeting facilities for the Advisory Councils.

Mr. Brian Aburano, the Commission's legal counsel, mentioned that in the rules that were just adopted, there is a section of rules for the Advisory Councils. He noted that there are provisions for public meetings of the Advisory Councils. He also noted that the rules allow the Advisory Councils to adopt additional rules, subject to the approval of the Commission.

Commissioner Frierson added that she would welcome the Advisory Councils' suggestions and comments. She added that she feels the Advisory Councils will offer a lot of help to the Commission.

Commissioner Masumoto asked that the Commission Staff alert the Advisory Council members of the agenda for all subsequent meetings so that they could decide whether they wanted to attend such meetings and to allow them time to make the necessary arrangements to attend such meetings.

V. Administrative Matters

A. Technical Briefing by Mr. James Funaki

Taking an item out of order, Chairperson Minami asked Mr. James Funaki to give the Commission a briefing as to the history of reapportionment in Hawaii.

Mr. Funaki gave an overview of Hawaii's reapportionment history:

- Oliver Wendell Holmes stated that a page of history is worth a volume of logic. He hoped that the historical information that he would be presenting would be of aid to the Commission in its tasks.
- Hawaii's history of reapportionment starts with the Reynolds v. Sims case in 1964. In that case, the Supreme Court declared that the Equal Protection Clause requires that seats in both houses of a bicameral state legislature be apportioned substantially on a population basis, and that the districts of both houses be constructed as nearly equal in population as practicable.
- In 1964, Hawaii was badly malapportioned. The Senate seats were apportioned on the basis of geography, and the House seats were apportioned on the basis of registered voters. In an attempt to answer the requirements of Reynolds v. Sims, the Hawaii Legislature called a special session in 1964 and considered several reapportionment proposals at that time. But none was enacted in that special session.
While the special session was going on, a complaint was filed with the Federal District Court in Holt v. Richardson to reapportion the State Legislature. William Richardson was the Lieutenant Governor at that time and the Elections Officer for the State. The State Senate and House intervened as separate defendants in that matter. The Governor also intervened.
- In 1965, while in regular legislative session, the Hawaii Legislature attempted to enact a reapportionment plan. At that time, they were also involved in the Holt v. Richardson case and under the jurisdiction of the Federal District Court. The Court ordered the Hawaii Legislature to come up with a provisional plan for review.
The Hawaii Legislature enacted and fashioned a reapportionment plan, which was based on registered voters and also provided for multi-member districts. The registered voter base was selected because it was a readily available statistic compared to other types of population bases such as; eligible voters, citizen voters, or federal population which was affected by transients. The registered voter base was a convenient base to use. Politically, it mitigated the effect of neighbor island senators that were being depleted. The neighbor island senators were reduced from 15 in number to 6.

The Federal District Court approved the registered voter base, but rejected the multi-member districting. On appeal, it reached the United States Supreme Court under the title of *Burns v. Richardson* and was decided in 1966

- The U.S. Supreme Court in *Burns v. Richardson* held that the reapportionment plan with the registered voter base satisfied the Equal Protection Clause, because the plan produced a distribution of legislators not substantially different from that which would have resulted from the use of a permissible population base. The Court also stated that the Equal Protection Clause does not require the states to use population figures derived from the Federal Census in drawing reapportionment plans. The Court noted that the states need not include: aliens, transients, short-term or temporary residents or persons denied the vote for conviction of a crime. The Court recognized Hawaii's difficulties in using the Federal Census figures because of the large and fluctuating military presence in Hawaii. During the major wars that have occurred world wide (e.g. World War II, Korean War and Vietnam War) there have been major military population escalations in Hawaii.
- The U.S. Supreme Court recognized at that time that a high proportion of Hawaii's potential voting population was registered, and that 88-94% of all registered voters had voted in 1958, 1959, 1960 and 1962. It also acknowledged that the reapportionment plan was a preliminary one with a permanent plan to be fashioned at the 1968 Constitutional Convention. Facts and circumstances were construed by the U.S. Supreme Court in the most favorable light for Hawaii. However, as a caveat, the Court said that the registered voter base for Hawaii was not for all time and not for all circumstances. This particular caveat proved to be significant in later years.
- The U.S. Supreme Court also approved multi-member districting saying that, although you may have several members in one district, it does not change the weight of the voter's vote, so long as population equality is maintained per seat.
- It was presented to the U.S. Supreme Court that the matter would be revisited at the 1968 Constitutional Convention to try to fashion a permanent plan for Hawaii. The 1968 Constitutional Convention convened on the basis that circumstances had not changed since the 1966 *Burns v. Richardson* decision. The Constitutional Convention, therefore, adopted the registered voter base into Hawaii's State Constitution. Unlike today, data for various population bases were not readily available or calculable, whereas the registered voter base was convenient and readily available.
- In 1971, the Federal District Court approved the 1968 Constitutional Convention Apportionment Plan.
- In 1973, the first Reapportionment Commission was assembled. The Reapportionment Commission used the registered voter base and multi-member districts.

- The 1978 Constitutional Convention continued to retain the registered voter base. They were advised of the U.S. Supreme Court's caveat regarding the registered voter base as not being for all time and for all circumstances. Not much attention was given to the caveat because no one had complained about the registered voter base, so they continued to follow the registered voter base as in the past.
- The 1981 Reapportionment Commission also used the registered voter base under the Hawaii State Constitution. The Commission was in sort of a bind because the Constitution required the use of registered voter base and they were mindful of the caveat of the U.S. Supreme Court and were concerned that the circumstances were not the same as during the time of the Burns decision. They continued to use the registered voter base and used multi-member districting.
- In 1982, members of the Republican Party challenged the registered voter base as well as the League of Women Voters who also challenged the registered voter base and the disparity in the population deviation among districts. The Federal District Court found that the use of the registered voter base and the resulting deviations among the districts made the 1981 reapportionment plan invalid. The Court found that the distribution of the legislative districts in the 1981 reapportionment plan was substantially different from that which would result from use of a permissible population base. Masters were appointed to fashion a temporary court plan, which used total population less the population of certain transient groups. The Court used single-member districting although the history of Hawaii has been to use multi-member districting. Whenever courts impose their own plans, they deem it to be an unwelcome obligation. They do not want to get involved in political considerations such as multi-member districting. As such, they use single member districting. The courts' interest is only to make sure that the Equal Protection Clause is adhered to.
- The Reapportionment Commission was reconstituted shortly thereafter. They adopted the plan as presented by the Court.
- In 1991, the Reapportionment Commission used the population base similar to what was approved in *Travis v. King* in 1982. Although the Constitution still required registered voter base, the Commission could now look to the Court's invalidation of the registered voter base. The 1991 Reapportionment Commission adhered to the use of single-member districts, although they did consider the possibility of using multi-member districts.
- The 2001 Reapportionment Commission's tasks are as follows:
 - Redraw the U.S. Congressional districts based on the total population according to the 2000 Census. The Congressional Apportionment, HRS § 25-2(b), requires the use of total Census population for the purposes of redistricting. The population percentage deviation among Congressional districts must be less than 1% deviation.

- State reapportionment has a little more flexibility in regards to population deviations among districts. Population percent deviation for the Senate and House districts must be below 10% but the Supreme Court has allowed up to 16% deviation with justification. One Hawaii case indicates that over representation of one house can be balanced by under representation of another house where the same residents are affected.
- The 2001 Reapportionment Commission has been added a task of staggered Senate terms after the reapportionment of state legislative districts, according to the Hawaii Constitution.

Commissioner Masumoto asked about the rest of the history of the 1992 Constitutional amendments. He asked if the 1992 constitutional amendments were made to confirm what the 1991 Reapportionment Commission did, and to define the use of resident population base for the legislature. Mr. Funaki responded that he did not have the history to recall at the moment; he would need to look through his research.

Advisory Council member, Jim Hall, commented that the 1981 reapportionment plan, because it was a court appointed plan, the federal judge said that the recommended base would be the citizen eligible base. The court appointed masters decided something different, they decided on the voter base. He mentioned that the 1991 Reapportionment Commission made a report that recommended that in the future the Reapportionment Commission should use the citizen eligible base. The amendments to the constitution were simultaneously passed with the first reapportionment plan.

B. GIS Staff Services Status Report

Mr. David Rosenbrock reported that the topics of discussion are:

▪ **Population Base**

- U.S. Congressional Districts. Under both federal law and Hawaii Revised Statutes, Section 25-2(b), the population base to be used for reapportioning the U.S. Congressional districts is the total population of the State of Hawaii using figures from the most recent U.S. census.

Both federal and state law require that the number of persons per district is to be as nearly equal as possible. Federal case law requires a good faith effort to achieve precise mathematical equality between the districts. Deviations of 0.94% have been struck down. Deviations of up to 0.82% have been upheld. There is no hard and fast rule as to what percentage deviation will be accepted.

- State Legislative Districts. Under Article IV, Section 6 of the State Constitution, the population base of “permanent residents” is to be used to apportion and redraw state legislative districts.

Under the State Constitution, the number of permanent residents per district is to be as nearly equal as practicable. Federal courts are not as strict in requiring mathematically equal state legislative districts. They permit States to have larger deviations among state legislative districts in order to accommodate legitimate state objectives or rational state policies. They use a rule of 10%. If the deviation is under 10%, the plan is prima facie constitutional and the burden will be on anyone challenging the plan to prove it is unconstitutional. If over 10%, the plan is prima facie unconstitutional and must be justified by the State.

- Census Data. In March 2001 the Census Bureau released unadjusted block data as the Official Census 2000 redistricting data set, known as PL 94-171 data file. The PL 94-171 data file is to be used for the purpose of legislative redistricting as required by Public Law 94-171. The data file has only four tables that were released to the Commission and those tables are the only data that the Commission has to use for reapportionment and redistricting.

▪ **Permanent Resident Exclusions**

- As noted by Mr. Funaki, in *Burns v. Richardson*, the Supreme Court said that it has never suggested that the States are required to include aliens, transients, short-term or temporary residents, or persons denied the vote for conviction of crime in their apportionment bases for state legislative districts.
- The State has used the “permanent resident” population base for the last two reapportionments. Categories excluded have been: sentenced felons, non-resident students, and non-resident military and their dependents. Aliens have been considered for exclusion, but have not been excluded in the past due to insufficient information.
 - ◆ Sentenced Felons: Reported by the Department of Public Safety End of the Month Population Report, March 31, 2000. The data is sorted by facility location and the population can be assigned to specific census blocks. Some questions and discussions were taken up about the count of sentenced felons and the status of felons on probation.
 - ◆ Non-resident Students: Various institutes of higher education have provided data regarding non-resident students. Some of them segregated this data by identification of those students that were

paying non-resident tuition. HPU, BYUH, and Chaminade University provided a list of students with records showing a permanent residence other than Hawaii. The students are located by their local addresses and can be assigned to specific census blocks.

- ◆ Aliens: The Census Bureau 2000 PL 94-171 data does not identify alien population figures. The Commission staff will be meeting with the INS on June 18, 2001 to determine if they can provide data on the status of the alien population in Hawaii. It was asked whether the Census Bureau counted aliens in its Census 2000 counts. Mr. Rosenbrock stated that the Census 2000 count received by the State of Hawaii does not contain any information on the alien population in Hawaii. The Commission's legal counsel stated that recent court cases indicate that the Federal Census data includes all aliens whether legal or illegal – although they are not separately identified or enumerated.
- ◆ Non-resident Military: The Defense Manpower Data Center WEST, through local contacts at PACOM, has sent data to the Commission's staff concerning non-resident military personnel assigned to units in the State of Hawaii and their dependents. The data identifies the number of such non-resident military personnel by ZIP code. The data was extracted as of April 30, 2001. The data was compiled by searching the Active Duty Pay File identifying all military personnel ("sponsors") having a State of Legal Residence other than Hawaii, but a Duty Station Located in Hawaii. The sponsor's dependents were identified through use of the Defense Enrollment Eligibility Reporting System (DEERS) Medical Point In Time system. The DEERS' extract matched Social Security Numbers of the sponsors with their dependents as of April 30, 2001. The DEERS' system also provided Zip Code residence data for the dependents. The State's consultant is working with local command to refine the data provided by the military in order to produce numbers that more accurately reflect the non-resident military population physically present in Hawaii. As noted above, the sponsors and their dependents are located by their local ZIP codes and can be assigned to specific census blocks.

▪ **Basic Island Units**

- Under the State Constitution, the method prescribed for reapportionment of the state legislative districts is the method of equal proportions. Under that method, the Commission would allocate or apportion the total number of state legislators for each house among the basic island units (Oahu, Hawaii, Maui, and Kauai). After it has

done that, it would draw the districts on each basic island unit to accommodate the number of legislators allocated to the basic island unit.

- As noted in *Burns v. Richardson*, use of the method of equal proportions will not always result in a constitutional apportionment plan. This is because use of the method may result in deviations that are too large among the resulting districts, i.e., over 10%. In 1991, the Commission decided it could not use the method of equal proportions, as it would result in an unconstitutional plan.
- What was just talked about also relates to the State Constitution's requirement that state legislative districts not extend beyond a basic island unit. This requirement assumes that you can constitutionally apportion the number of legislators among the basic island units in a constitutional manner. If you can't, then you have to create what is called "canoe districts". Again, in 1991, the Commission found it had to create canoe districts in order to have a constitutional plan.
- The Reapportionment Technical Staff presented information regarding the Commission's potential use of the method of equal proportions based on total population figures from the 2000 U.S. Census and potential adjusted "permanent resident" population figures. Using the basic island unit of Kauai as an example, they demonstrated that use of the method of equal proportions would apparently result in unconstitutionally large deviations in any resulting state legislative redistricting. Using the total population figures and assigning two state senators to Kauai resulted in Kauai's districts being 21% under the ideal population for a 2001 state senatorial district. Assigning three state senators to Kauai resulted in Kauai being 18% over the ideal population for a 2001 state senatorial district. Similar analysis for state representative districts showed Kauai being either 21% under or 18% over the ideal population for a 2001 state representative district. Using various "permanent resident" population figures (e.g. total population less sentenced felons, non-resident students, and/or non-resident military and dependents) did not improve the deviations. In some cases, the deviations became worse.
- Mr. Jim Hall suggested that the Commission consider the case of *Blair v. Ariyoshi*, which allowed over representation in the house and under representation in the senate as a means to balance voting power, therefore not having canoe districts.

▪ **Definitions of contiguity, compactness and submergence**

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- Contiguity: Sharing an edge or boundary, nearby, neighboring, adjacent. Must be able to walk to all places within a district without crossing the border. Examples were shown to the Commission and the public.
- Compactness: Closely and firmly united or packed together, packed into a relatively small space. There are two different views of compactness. Examples were shown to the Commission and the public.
 - ◆ Geometrically Compact: The shape of the district must be as close to a circle or square/rectangle as possible.
 - ◆ Functionally Compact: The shape of the district must also be easy to trace and describe. Should be able to walk the whole district easily and in a reasonable manner.
- Submergence: When a district is drawn so that a distinct minority group's (i.e., racial minority's) voting power is submerged in a larger district so that their opportunity for electing a candidate of their choice is greatly reduced, if not eliminated. Examples were shown to the Commission and the public.

▪ Tentative Schedule

- A tentative calendar was passed out to the Commission reflecting the statutory deadlines and other timeline decisions proposed by the Commission Staff.
- Statute timeline requirements and proposed timeline:

August 9, 2001 –	Complete the plan of the Congressional, Senate, and House districts as well as the staggering of Senate terms
August 31, 2001 –	Publish the proposed plan
September 4-20, 2001 -	Public hearings at various locations across the State
September 7, 2001 -	100 Day statutory requirement to publish the proposed plan
October 11, 2001 -	Adopt the revised plan
October 26, 2001 -	150 Day statutory requirement to file the final plan with the Chief Election Officer (Dwayne D. Yoshina).
November 9, 2001 -	Publish the final plan

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December 28, 2001 - Statutory requirement as to when the 2001 Reapportionment Commission is to submit a written report to the Legislature

- Schedule of Commission meetings: Commission meetings are tentatively scheduled every Thursday at 2:00pm at the Hawaii State Capitol Conference Room 329, until November 29, 2001, except for Holidays and Public Hearings scheduled on a Thursday.
- The calendar is subject to change and open to suggestions by the Commissioners and Advisory Council members. Advisory Council member Madge Schaefer pointed out that if the published plan is not going to be published until Friday, August 31, 2001 and the hearings won't be until Tuesday, September 4, 2001, there will not be enough time for the public to review the plan and have comments and suggestions ready for the public hearings.

▪ Recommendation of Technical and Public Information Committees

A brief description and requirements of the Technical and Public Information Committees was passed out to the Commission.

C. Administrative Staff Services Status Report

Mr. Dwayne Yoshina asked that all the Advisory Council members present stay back after the meeting for some administrative information they need to be briefed on for fiscal purposes.

D. Technical Briefing: Single-Member and Multi-Member Report

A technical briefing of single-member and multi-member districting was presented by the Reapportionment Staff summarizing the requirements as well as the pros and cons. In connection with the briefing, written material was handed out to the Commission on single-member and multi-member districts.

Some comments were made by the public as to the briefing. Chairperson Minami advised the public that they could make their own comments about single versus multi-member districts. One member of the public indicated that he or she would like to submit written comments to the Commission based on the written materials handed out to the Commission.

VI. Correspondence and Announcements

There were no correspondence or announcements.

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VII. Executive Session

The Commission did not go into Executive Session.

VIII. Other Business

Issues to be discussed in the meeting on June 21, 2001:

- Standards and criteria that the Commission should discuss or bring up before decision-making meeting, for the reapportionment plan. For example, the definition of a neighborhood, no splitting of census blocks, etc.
- There will be a report on the meeting with the INS concerning Aliens.

Chairperson Minami wishes hold a decision-making meeting in two weeks, June 28, 2001, on the following issues:

- Population Base
- Non-resident exclusions
- Standards and Criteria
- Adopting of the definitions of the terms presented for contiguity, compactness, and submergence.

IX. Adjournment

The next scheduled meeting is Thursday, June 14, 2001, 2:00 p.m. at the Hawaii State Capitol, Room 329.

With no other business to discuss, Chairperson Minami adjourned the Third Regular Meeting at 4:20 p.m.

Respectfully submitted,

Dwayne D. Yoshina
Chief Election Officer
Secretary of the
2001 Reapportionment Commission